

2003 DRAFTING REQUEST**Bill**Received: **11/06/2002**Received By: **mshovers**Wanted: **As time permits**

Identical to LRB:

For: **Michael Huebsch (608) 266-0631**By/Representing: **Bob**This file may be shown to any legislator: **NO**Drafter: **mshovers**

May Contact:

Addl. Drafters:

Subject: **Munis - miscellaneous**

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Huebsch@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Incorporation of towns surrounded by navigable waterways

Instructions:

See Attached. Based on 01-2823 and 01-5153

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 11/06/2002	chanaman 11/14/2002					S&L
/1			pgreensl 11/18/2002		lemery 11/18/2002	amentkow 01/08/2003	S&L
/2	mshovers	wjackson	pgreensl		amentkow	amentkow	

Handwritten note: *Don't forget to file*

02/05/2003 12:53:41 PM

Page 2

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	02/04/2003	02/05/2003	02/05/2003 _____		02/05/2003	02/05/2003	

FE Sent For:

<END>

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/?	mshovers 11/06/2002	chanaman 11/14/2002					S&L
/1		1/2 WJ 2/5	pgreensl 11/18/2002	2/5 P816	lemery 11/18/2002	amentkow 01/08/2003	

2/5
P8

~01/08/2003 12:17:27 PM

Page 2

FE Sent For:

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11/18/2002 10:18:25 AM
Page 1

2003 DRAFTING REQUEST

Bill

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/?	mshovers 11/06/2002	chanaman 11/14/2002					S&L
/1			pgreensl 11/18/2002		lemery 11/18/2002		

*Jacket
per MES*

11/18/2002 10:18:25 AM

Page 2

FE Sent For:

<END>

11/06/2002 02:50:14 PM

Page 1

2003 DRAFTING REQUEST**Bill**

Received: 11/06/2002

Received By: mshovers

Wanted: As time permits

Identical to LRB:

For: Michael Huebsch (608) 266-0631

By/Representing: Bob

This file may be shown to any legislator: NO

Drafter: mshovers

May Contact:

Addl. Drafters:

Subject: Munis - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.Huebsch@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Incorporation of towns surrounded by navigable waterways

Instructions:

See Attached. Based on 01-2823 and 01-5153

Drafting History:

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11 MES 11/6/02
FE Sent For:

11/18	11/18						
TS	PSDF						

<END>

Shovers, Marc

From: Delaporte, Robert
Sent: Tuesday, October 22, 2002 3:56 PM
To: Shovers, Marc
Subject: RE: Change the status of the town of Campbell in LaCrosse County to a village

i think that's the one in question...thanks

-----Original Message-----

From: Shovers, Marc
Sent: Tuesday, October 22, 2002 2:05 PM
To: Delaporte, Robert
Subject: RE: Change the status of the town of Campbell in LaCrosse County to a village

Hi Bob:

I can prepare a new draft for next session based on a letter Timm Speerschneider sent to Dan Kapanke. The letter commented on LRB -5153/P1, which Peter Grant prepared while I was out of the office. The changes suggested in that letter are the only changes I know of. Please let me know if you have others.

Marc

Marc E. Shovers

Senior Legislative Attorney
Legislative Reference Bureau
Phone: (608) 266-0129
Fax: (608) 264-8522
e-mail: marc.shovers@legis.state.wi.us

-----Original Message-----

From: Delaporte, Robert
Sent: Tuesday, October 22, 2002 1:34 PM
To: Shovers, Marc
Subject: RE: Change the status of the town of Campbell in LaCrosse County to a village

Marc, is there another draft coming? I thought we sent over some changes

-----Original Message-----

From: Shovers, Marc
Sent: Wednesday, June 26, 2002 4:12 PM
To: Delaporte, Robert
Subject: Change the status of the town of Campbell in LaCrosse County to a village

<< File: 01-4823/1 >>

Marc E. Shovers

Senior Legislative Attorney
Legislative Reference Bureau
Phone: (608) 266-0129
Fax: (608) 264-8522
e-mail: marc.shovers@legis.state.wi.us



**DEWITT
ROSS & STEVENS**
LAW FIRM

Capitol Square Office
Two East Main Street
Suite 600
Madison, WI 53703-2865
Fax 608-252-8243
Tel 608-255-8881

West Office
Firstar Financial Centre
6000 Excelsior Drive, Suite 401
Madison, WI 53717-1914
Fax 608-831-2106
Tel 608-831-2100

Please respond to: Capitol Square Office
Direct Line: 608-252-9319

July 23, 2002

VIA TELECOPIER

Mr. Dan Kapanke
Town Chairman
Town of Campbell
2219 Bainbridge Street
La Crosse, WI 54603

RE: LEGISLATION PROPOSAL

Dear Dan:

I have reviewed the preliminary draft and my only comment concerns the insertion of "... the land area constitutes the entire town. . ." in Section 1. This is a concern because the entire land area (island) is not the town. I believe that a separate sentence should read "[T]his procedure shall only apply to an area that constitutes the entire town." The purpose of such a sentence is to make clear that only an entire town can incorporate, not a portion of the town which would leave a remnant.

Please give me a call if you have any questions.

Very truly yours,

DEWITT ROSS & STEVENS PC



Timm P. Speerschneider

TPS:mai

cc: Peter R. Grant, Esq.



**DEWITT
ROSS & STEVENS_{sc}**
LAW FIRM

*Peter
MAKLE,
Here is the
language we'd
like drafted
thanks!
Bob*

DELAPORTE

EDIA DIRECTOR

IN STATE REPRESENTATIVE

E HUEBSCH

ASSEMBLY DISTRICT

Financial Centre
Sells Drive, Suite 401
WI 53717-1914
-831-2106
-831-2100

EMAIL:
RT.DELAPORTE@legis.state.wi.us

July 9, 2002

Mr. Dan Kapanke
Town Chairman
Town of Campbell
2219 Bainbridge Street
La Crosse, WI 54603

RE: LEGISLATION PROPOSAL

Dear Dan:

Enclosed is the proposed Legislation. Pursuant to your request, I have sent a copy to Representative Mike Huesch.

Very truly yours,

DEWITT ROSS & STEVENS _{sc}

Timm P. Speerschneider

TPS:mai
Enclosure

COPY

TOWNS WITHIN ISLANDS LEGISLATIVE PROPOSAL

Background: Towns that are contained entirely within an island represent an unique situation regarding incorporation. By virtue of their geography as islands, they inherently possess the characteristics of incorporated communities. For example, § 66.0207(1)(a) of the Wisconsin Statutes, provides in part that the proposed village should be "reasonably homogeneous . . . taking into consideration natural boundaries. . . ." In the case of islands, natural boundaries provided by navigable waterways essentially determine the boundaries of the community. Moreover, there are inherent difficulties in providing public services to islands from mainland communities. Indeed, it will generally be more efficient for the island to provide its own services rather than extending services from the mainland. Accordingly, towns which are wholly contained within an island and have obtained a certain population and level of development should not have to follow the general incorporation procedures for other non-island towns.

Conceptual Proposal: If such towns were able to incorporate as a village, they would gain a number of tools to assist in their overall development as communities. Villages have more powers relating to the provision of local government services. For example, tax incremental financing is a tool that would greatly help with infrastructure costs and help address annexation from within. This tool, however, is unavailable to towns. Incorporation also provides border security which is particularly critical to provide some measure of economic stability and protection of the town's tax base.

Being able to incorporate as a village is far from a complete solution, but it does provide such towns with additional tools. Unfortunately, standard incorporation procedures are extremely lengthy and provide other numerous opportunities to delay the incorporation process. It is for this reason, that we are proposing an expedited incorporation process for towns contained within islands. The legislation includes a provision requiring the entire town to incorporate and as a result there are no new additional units of government created.

Specific Request: Attached to this memo is a proposal for expedited incorporation of towns contained within islands. It would only apply to towns contained within islands that meet the requirements of being a village in fact. It is based on the provision currently contained in Wis. Stat. § 66.0215 (formerly § 66.012), known as the "Oak Creek law." The Oak Creek law was enacted in 1955 to provide an expedited incorporation process to resolve a long standing dispute between the City of Milwaukee and the adjoining Town of Oak Creek. The Oak Creek law was also used successfully by the City of Fitchburg as chronicled in the *City of Madison v. Town of Fitchburg*, 112 Wis. 2d 224, 332 N.W.2d 782 (1983). This law, which has been on the books for over 45 years and upheld by the Wisconsin Supreme Court, provides a workable framework for accomplishing the same basic objective that the Town of Oak Creek had back in the 1950s -- a streamlined incorporation process for a community under unique circumstances.

Proposed Legislation for Incorporation of Island Towns

SECTION 1. Section 66.0212 is created to read:

1 66.0212 Incorporation of island towns to Villages.

2 (1) PETITION. If the resident population of a town exceeds 4,000, as shown by the last federal
3 census or by a census under sub. (2), if the town is wholly contained within a land area not exceeding
4 15 square miles surrounded by navigable waterways and contains an equalized valuation in excess of
5 \$125,000,000 and if a petition signed by 100 or more persons, each an elector and taxpayer of the
6 town, and requesting submission of the question to the electors of the town, is filed with the clerk of
7 the town, the procedure for becoming a village is initiated. This procedure shall only apply to a land
8 area that constitutes the entire town. If at the time of the filing of the incorporation petition any
9 portion of the town shall be subject to a prior annexation proceeding by an incorporated municipality,
10 that portion of the town shall be detached from the town if the annexation is determined to be valid
11 either as a result of the failure of the town or resident thereof to have filed a valid legal objection or
12 by final judgment determining the validity of said annexation. If the annexation shall be determined
13 by judgment to be invalid or null and void the land subject to the annexation shall be returned to and
14 become part of the village if so formed pursuant to this section.

15 (2) REFERENDUM. At the next regular meeting of the town board following the filing of the
16 petition under sub. (1), the board by resolution shall provide for a referendum by the electors of the
17 town. The resolution shall conform to the requirements of s. 5.15 (1) and (2) and shall determine the
18 numbers and boundaries of each ward of the proposed village and the time of voting, which may not
19 be earlier than 6 weeks after the adoption of the resolution. The resolution may direct that a census
20 be taken of the resident population of the territory on a day not more than 10 weeks previous to the

date of the election, exhibiting the name of every head of a family and the name of every person who is a resident in good faith of the territory on that day, and the lot or quarter section of land on which that person resides, which shall be verified by the affixed affidavit of the person taking the census.

(3) Notice of Referendum. Notice of the referendum shall be given by publication of the resolution in a newspaper published in the town, if there is one, otherwise in a newspaper designed in the resolution, once a week for 4 successive weeks, the first publication to be not more than 4 weeks before the referendum.

(4) VOTING PROCEDURE. The referendum shall be conducted in the same manner as elections for supervisors of the town board. The question appearing on the ballot shall be "Shall the town of.... become a village?". Below the question shall appear 2 squares. To the left of one square shall appear the words "For a village" and to the left of the other square shall appear the words "Against a village". The inspectors shall make a return to the clerk of the town.

(5) CERTIFICATE OF INCORPORATION. If a majority of the votes are cast in favor of a village the clerk shall certify the fact to the secretary of state, together with the result of the census, if any, and 4 copies of a description of the legal boundaries of the town and 4 copies of a plat of the town. The secretary of state shall then issue a certificate of incorporation, and record the certificate in a book kept for that purpose. Two copies of the description and plat shall be forwarded by the secretary of state to the department of transportation and one copy to the department of revenue.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-5153/P1dn
PG:kmg:pg

July 12, 2002

(part of
File)

At your request, this preliminary draft incorporates the language proposed by Mr. Speerschneider. I made only minor changes to improve clarity and readability. If you request this draft for introduction next session, Marc Shovers (whose expertise is in municipal law) may wish to discuss additional changes with you.

Peter R. Grant
Managing Attorney
Phone: (608) 267-3362
E-mail: peter.grant@legis.state.wi.us



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-06307

MESD:.....

cmh RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

DNOTE

gjm

1 AN ACT ...; relating to: the incorporation of certain towns as villages.

Analysis by the Legislative Reference Bureau

Under current law, towns may incorporate as cities or villages by a number of methods if certain procedures are followed. Under one of the methods, the procedures include the following:

1. The circulation of an incorporation petition in the territory to be incorporated, and the filing of the petition with the circuit court.

2. A circuit court hearing on the petition at which the court determines whether a number of statutory standards are met, including resident population and population density.

→ 3. If the court finds that the standards are met, a review of the petition by the department of administration (DOA) for a determination on whether a number of statutory standards are met, including the characteristics of the territory, the level of governmental services that are desired or needed by the residents compared to the level of services offered by the proposed city or village, the impact upon the remainder of the town from which the territory is to be incorporated, and the impact of the proposed incorporation on the metropolitan community.

If DOA dismisses the petition, the circuit court must issue an order dismissing the petition. If DOA grants the petition, the circuit court must order an incorporation referendum. If a majority of the votes in the referendum are cast in favor of a village or city, the secretary of state must issue and record a certificate of incorporation.

Under another one of the methods, the incorporation as cities of certain towns that are adjacent to 1st class cities (presently only Milwaukee) may occur under an expedited process which does not require DOA review. With this method, the following procedures are required:

first

1. The circulation of an incorporation petition in the territory to be incorporated, and the filing of the petition with the town clerk. The petition must be signed by at least 100 persons who are electors and taxpayers in the town, and may only be circulated in towns which have the following characteristics: a resident population that exceeds 5,000; the town's equalized assessed value exceeds \$20,000,000; the town is adjacent to a 1st class city.

2. At the next regular meeting of the town board following the filing of the petition, the board must adopt a resolution calling for a referendum by the electors on the question of the incorporation of the town as a city.

If a majority of the votes are cast in favor of a city, the clerk must certify the fact to the secretary of state, who shall then issue a certificate of incorporation.

This bill creates a new method for certain towns, which are located on a land area that is surrounded by navigable water, to incorporate as a village under an expedited process which does not require DOA review. Under this bill, the following procedures are required:

1. The circulation of an incorporation petition in the territory to be incorporated, and the filing of the petition with the town clerk. The petition must be signed by at least 100 persons who are electors and taxpayers in the town, and may only be circulated in towns which have the following characteristics: a resident population that exceeds 4,000; the town's equalized assessed value exceeds \$125,000,000; the town is wholly contained within a land area not exceeding 15 square miles; the land area is surrounded by navigable waterways. This procedure may only be used with respect to an area that constitutes an entire town.

2. At the next regular meeting of the town board following the filing of the petition, the board must adopt a resolution calling for a referendum by the electors on the question of the incorporation of the town as a village.

If a majority of the votes are cast in favor of a village, the clerk must certify the fact to the secretary of state, who shall then issue a certificate of incorporation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

INS 2-1B (LRB 01-5153/P1)

SECTION 1. 66.0215 (6) of the statutes is amended to read:

1. ~~66.0215~~ (6) ~~any~~ ^{VILLAGE} POWERS. A ~~city~~ ^{village} incorporated under this section is a body corporate and politic, with the powers and privileges of a municipal corporation at common law and conferred by ch. ~~66~~ ⁶¹.

History: 1971 c. 304; 1977 c. 29 s. 1654 (8) (c); 1979 c. 89; 1981 c. 4 s. 19; 1981 c. 377; 1983 a. 532 s. 11; Stats. 1983 s. 66.012; 1991 a. 316; 1993 a. 329; 1995 a. 16 s. 2; 1995 a. 201; 1999 a. 150 s. 37; Stats. 1999 s. 66.0215.

SECTION 2. 66.0215 (7) of the statutes is amended to read:

1 ~~66.0215~~ (7) EXISTING ORDINANCES. (a) Ordinances in force in the territory or any
2 part of the territory, to the extent not inconsistent with ch. ~~66.0215~~ ^{61.} continue in force until
3 altered or repealed.

4 (b) A county shoreland zoning ordinance enacted under s. 59.692 that is in force
5 in any part of the territory continues in force until altered under s. 59.692 (7) (ad).

6 (8) INTERIM OFFICERS, FIRST VILLAGE ELECTION. Sections ~~66.0215~~ (8) and (9), as
7 ~~they apply~~ ^{it applies} to a town that is incorporated as a city under s. 66.0215, ~~apply~~ ^{applies} to a town
8 that is incorporated as a village under this section.

History: 1971 c. 304; 1977 c. 29 s. 1654 (8) (c); 1979 c. 89; 1981 c. 4 s. 19; 1981 c. 377; 1983 a. 532 s. 11; Stats. 1983 s. 66.012; 1991 a. 316; 1993 a. 329; 1995 a. 16 s. 2; 1995 a. 201; 1999 a. 150 s. 31; Stats. 1999 s. 66.0215.

9 (END)



✓
Section #. 66.0231 of the statutes is amended to read:

66.0231 Notice of certain litigation affecting municipal status or boundaries. If a proceeding under ss. 61.187, 61.189, 61.74, 62.075, 66.0201 to 66.0213, 66.0215, ^{66.0216,} 66.0217, 66.0221, 66.0223, 66.0227 or 66.0307 or other sections relating to an incorporation, annexation, consolidation, dissolution or detachment of territory of a city or village is contested by instigation of legal proceedings, the clerk of the city or village involved in the proceedings shall file with the secretary of state 4 copies of a notice of the commencement of the action. The clerk shall file with the secretary of state 4 copies of any judgments rendered or appeals taken in such cases. The notices or copies of judgments that are required under this section may also be filed by an officer or attorney of any party of interest. The secretary of state shall forward to the department of transportation 2 copies and to the department of revenue and the department of administration one copy each of any notice of action or judgment filed with the secretary of state under this section.

History: 1977 c. 29 s. 1654 (8) (c); 1977 c. 273; 1979 c. 355; 1983 a. 532 s. 36; 1991 a. 269; 1995 a. 35; 1999 a. 150 s. 70; Stats. 1999 s. 66.0231.



Section #. 66.1001 (3) (a) of the statutes is amended to read:

66.1001 (3) (a) Municipal incorporation procedures under s. 66.0201, 66.0203 [↓] ~~or~~ 66.0215, ^{or 66.0216}

History: 1999 a. 9, 148; 1999 a. 150 s. 74; Stats. 1999 s. 66.1001; 1999 a. 185 s. 57; 1999 a. 186 s. 42; 2001 a. 30, 90.

(END)

D-note

ENS 2-1A

Section #. 59.692 (7) (ad) (intro.) of the statutes is amended to read:

59.692 (7) (ad) (intro.) Provisions of a county shoreland zoning ordinance that are enacted under this section that were applicable, prior to incorporation, to any shoreland area that is part of a town that incorporates as a city or village under s. 66.0203, 66.0211, 66.0213 [↓] ~~or~~ 66.0215 [✓] or 66.0216 after April 30, 1994, shall continue in effect and shall be enforced after incorporation by the incorporated city or village unless any of the following occurs:

History: 1979 c. 233; 1981 c. 330; 1983 a. 189 s. 329 (23); 1991 a. 39; 1993 a. 329; 1995 a. 201 s. 476; Stats. 1995 s. 59.692; 1995 a. 227; 1997 a. 27, 35, 252; 1999 a. 9; 1999 a. 150 s. 672.

end of
insert

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INS
2-13
p. 1003

- 1 AN ACT *to create* 66.0214 of the statutes; **relating to:** the incorporation of
2 certain towns as villages.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.
For further information see the *state and local* fiscal estimate, which will be
printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do
enact as follows:*

- (3) SECTION 1. 66.0214 of the statutes is created to read:
(4) 66.0214 ^{66.0214} ⁰²¹⁶ Incorporation of certain towns surrounded by navigable
5 waterways. (1) PETITION. If the resident population of a town exceeds 4,000, as
6 shown by the most recent federal census or by a census under sub. (2), the town is
7 wholly contained within a land area not exceeding 15 square miles, the land area
8 constitutes the entire town, the land area is surrounded by navigable waterways, the
9 equalized valuation of the town exceeds \$125,000,000, and a petition signed by at

Handwritten: \$ NS 2-18p. 2063

Handwritten: The procedure under this section may only be used with respect to an area that constitutes an entire town.

1 least 100 persons, each of whom is an elector and taxpayer of the town, requesting
2 submission of the question to the electors of the town, is filed with the town clerk, the
3 procedure for becoming a village under this section is initiated. If at the time of the
4 filing of the incorporation petition any portion of the town is subject to a prior
5 annexation proceeding by an incorporated municipality, that portion of the town
6 shall be detached from the town if the annexation is determined to be valid either as
7 a result of the failure of the town, or a resident of the town, to have filed a valid legal
8 objection or by final judgment. If the annexation is determined by final judgment to
9 be invalid, the territory that is subject to the annexation shall become part of the
10 village formed under this section.

11 (2) REFERENDUM. At the next regular meeting of the town board following the
12 filing of the petition under sub. (1), the town board by resolution shall provide for a
13 referendum by the electors of the town. The resolution shall conform to the
14 requirements of s. 5.15 (1) and (2) and shall determine the numbers and boundaries
15 of each ward of the proposed village and the time of voting, which may not be earlier
16 than 6 weeks after the adoption of the resolution. The resolution may direct that a
17 census be taken of the resident population of the territory on a day not more than 10
18 weeks before the date of the election, exhibiting the name of every head of a family
19 and the name of every person who is a resident in good faith of the territory on that
20 day, and the lot or quarter section of land on which that person resides, which shall
21 be verified by the affixed affidavit of the person taking the census.

22 (3) NOTICE OF REFERENDUM. The town clerk shall publish the resolution adopted
23 under sub. (2) in a newspaper published in the town. If no newspaper is published
24 in the town, the town clerk shall publish the resolution in a newspaper designated
25 in the resolution. The town clerk shall publish the resolution once a week for 4

INS 2-1B p. 3 of 3

1 successive weeks, the first publication to be not more than 4 weeks before the
2 referendum.

3 (4) VOTING PROCEDURE. The referendum shall be conducted in the same manner
4 as elections for town board supervisors. The question appearing on the ballot shall
5 be "Shall the town of become a village?" Below the question shall appear 2
6 squares. To the left of one square shall appear the words "For a village" and to the
7 left of the other square shall appear the words "Against a village." The inspectors
8 shall make a return to the town clerk.

9 (5) CERTIFICATE OF INCORPORATION. If a majority of the votes are cast in favor
10 of a village, the town clerk shall certify that fact to the secretary of state, together
11 with the result of the census under sub. (2), if any, 4 copies of a description of the legal
12 boundaries of the town, and 4 copies of a plat of the town. The secretary of state shall
13 issue a certificate of incorporation and record the certificate in a book kept for that
14 purpose. The secretary of state shall provide 2 copies of the description and plat to
15 the department of transportation and one copy to the department of revenue.

16 (END)

af INS 2-1B

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0630/?dn
MES.....

cmh

date

Representative Huebsch:

3rd
This bill is based on last session's LRB-5153/P1, which was based on the "Oak Creek Law", s. 66.0215 of the statutes. That statute contains provisions which are equivalent to s. 66.0216 (6) to (9) in this bill, but were not included in the materials submitted by Timm Speerschneider. I have incorporated provisions similar to s. 66.0215 (6) to (9) into this bill. Is this OK?

that

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0630/1dn
MES:cmh:pg

November 18, 2002

Representative Huebsch:

This bill is based on last session's LRB-5153/P1, which was based on the "Oak Creek Law," s. 66.0215 of the statutes. That statute contains provisions that are equivalent to s. 66.0216 (6) to (9) in this bill, but were not included in the materials submitted by Timm Speerschneider. I have incorporated provisions similar to s. 66.0215 (6) to (9) into this bill. Is this OK?

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.state.wi.us

Shovers, Marc

From: Shovers, Marc
Sent: Tuesday, January 21, 2003 3:32 PM
To: Delaporte, Robert
Subject: LRB -0630/1, regarding the incorporation of certain towns surrounded by navigable water.

Hi Bob:

I got a call today from a reporter from *Lee Newspapers* who said he was referred to me by Rep. Huebsch's office for answers to his questions about this bill. Generally, he wanted to know whether it was a private, local, or special bill and whether the bill may have some constitutional problems. I told the reporter that because the bill is not part of multi-subject legislation, such as a budget bill that has only a general relating clause, or title, I didn't think that there would be a constitutional problem.

As I was rereading Article IV, section 18 of the Wisconsin Constitution, however, I am now thinking that if this bill became law, someone could perhaps challenge it as a violation of that constitutional provision. The provision states as follows:

Article IV, §18

Title of private bills. Section 18. No private or local bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed in the title.

The first question to be answered is whether the Town of Campbell in La Crosse County is the only town that meets the requirements contained in s. 66.0216 (1) as created in the bill. If it is the only such town, are there other towns that meet some of the requirements but, for example, don't yet meet the population threshold or equalized valuation threshold? If there are other towns that meet the requirements or that could join the "class" created by the bill, there would be no problems with Article IV, section 18 if the bill is enacted as currently drafted.

If it is pretty certain, however, that the Town of Campbell is the only town to which the bill currently applies and it is likely to be the only town to which the bill will apply for the foreseeable future, I think that an argument could be made that the bill, if it is enacted as currently drafted, may violate Article IV, section 18 of the Wisconsin Constitution. The argument would be that the title, or relating clause and list of sections affected, does not state that the bill applies to the Town of Campbell as required by the Constitution. On the other hand, if the bill is enacted and is challenged, a court could hold that the relating clause is accurate, the bill is single-subject legislation, and even the most cursory reading of this very short bill reveals that it applies only to towns that meet several requirements, including population, equalized valuation of the town, size of the land area, and a land area surrounded by navigable water. A court could then conclude that the bill does not violate Article IV, Section 18.

Generally, courts have liberally construed relating clauses and found them to fully state a bill's content. The constitutional provision in question requires a bill's title to state the bill's contents so that the bill's real subject matter and nature are disclosed to the legislature and the public and so that fraud and surprises are avoided. See *Soo Line Railroad Co. v. Department of Transportation*, 101 Wis. 2d 64 (1981). Arguably, the bill meets this standard. In an early case, the state Supreme Court held that a bill that applies to only one geographical area and whose title uses expressions such as "certain" instead of identifying that area in the title does not violate Article IV, Section 18 (*Phillips & Others v. The Town of Albany & Others*, 28 Wis. 340 (1871)), but the Court also held that referring only generally to the collection and distribution of taxes in a bill's title while omitting that the bill affected only Milwaukee County violated this section (*Whitefish Bay v. Milwaukee County*, 224 Wis.

373 (1937).

In any event, I just wanted to bring this issue to your attention. If you believe that the Town of Campbell is the only conceivable town to which the bill could apply, you may wish to have the bill redrafted to mention the Town of Campbell in the relating clause. If, on the other hand, the requirements in created s. 66.0216 (1) apply to other towns or could conceivably apply to them in the near future, I don't think that the relating clause needs to be changed. Please let me know if you have any questions about the issues I've raised.

Maro

Marc E. Shovers

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e-mail: marc.shovers@legis.state.wi.us

Tracking:

Recipient

Delaporte, Robert

Delivery

Delivered: 01/21/2003 3:32 PM

Shovers, Marc

From: Delaporte, Robert
Sent: Thursday, January 30, 2003 2:02 PM
To: Shovers, Marc
Subject: RE: LRB -0630/1, regarding the incorporation of certain towns surrounded by navigable water.

Marc, can we get the change you suggested to the draft?

thanks

-----Original Message-----

From: Shovers, Marc
Sent: Wednesday, January 29, 2003 11:09 AM
To: Delaporte, Robert
Subject: RE: LRB -0630/1, regarding the incorporation of certain towns surrounded by navigable water.

Hi Rob:

I don't really like this option. If the relating clause says "relating to the incorporation of the Town of Campbell in La Crosse County, and other similarly situated towns, as a village", and if there really are other similarly situated towns, there is no need to mention specifically the Town of Campbell. And if there are no other similarly situated towns that meet or are near the requirements specified in created s. 66.0216, it is inaccurate to mention "similarly situated towns" in the relating clause.

If you are not sure whether there are other similarly situated towns and you want to hedge your bet, I still think that it's probably better to just mention the Town of Campbell in the relating clause and leave it at that. If it turns out that there are other towns that meet the requirements for incorporation as a village under created s. 66.0216, I would think that those other towns could use the statute to become a village.

Although I haven't done any research on this issue, I'd be very surprised if a person to whom a statute clearly applies was denied by the courts the ability to use the statute because it is discovered that, years earlier when the bill in question was enacted, the relating clause of the bill didn't apply to the person. On the other hand there *are* cases, some of which I've cited, that have declared statutes invalid because the relating clause, or title of the bill, did not reflect accurately the subject matter of bill. As I've discussed in previous e-mails, this could be the outcome for this bill if it is enacted as drafted and if it turns out that the Town of Campbell really was the only town to which the bill applied and the only town to which the bill would apply for the foreseeable future.

My advice is to change the relating clause so that it states "Town of Campbell in La Crosse County" and not mention any similarly situated towns. Please let me know if you'd like me to make any changes to the bill or if you have any additional questions.

Marc

-----Original Message-----

From: Delaporte, Robert
Sent: Tuesday, January 28, 2003 3:04 PM
To: Shovers, Marc
Subject: RE: LRB -0630/1, regarding the incorporation of certain towns surrounded by navigable water.

ok, after talking to the parties involved...they suggested this change to the relating clause...

relating to: the incorporation of the Town of Campbell as a village and other similarly situated towns.

What do you think?

thanks again for bringing this to our attention

-----Original Message-----

From: Shovers, Marc
Sent: Wednesday, January 22, 2003 11:59 AM
To: Delaporte, Robert
Subject: RE: LRB -0630/1, regarding the incorporation of certain towns surrounded by navigable water.

Well, the totally safe way to go is to just change the relating clause so that it states "Town of Campbell in La Crosse County." If the bill is changed so that it could also apply to Madeline Island and the relating clause is kept the same, referring to "certain towns", it would almost certainly be OK, based on the cases I've cited, although I don't know that I'd want to bet the mortgage on 2 relatively obscure state Supreme Court cases that are over 130 years old and nearly 70 years old. Guessing what any court is going to decide, especially a state supreme court, in any particular case is hardly an exact science.

Basically, it's a policy decision. The representative has to weigh the issue of how much attention he wants to divert from the Town of Campbell by going with the general relating clause, versus the complete safety (and greater scrutiny) of mentioning the Town of Campbell in the relating clause. Let me know if you want to make any changes to the bill.

Marc

-----Original Message-----

From: Delaporte, Robert
Sent: Wednesday, January 22, 2003 11:40 AM
To: Shovers, Marc
Subject: RE: LRB -0630/1, regarding the incorporation of certain towns surrounded by navigable water.

so would it be better to expand the bill so that say madeline island would qualify or to change the subject to just about the town of campbell?

-----Original Message-----

From: Shovers, Marc
Sent: Wednesday, January 22, 2003 11:38 AM
To: Delaporte, Robert
Subject: RE: LRB -0630/1, regarding the incorporation of certain towns surrounded by navigable water.

Hi Bob:

You are correct in stating that your bill does not "embrace more than one subject", but the question that could possibly be raised in a constitutional challenge would be whether that one subject is reflected accurately in the title. The relating clause to the bill is general, "relating to: the incorporation of certain towns as villages", implying that the scope of the bill is greater than the Town of Campbell in La Crosse County. My point is that if the bill is enacted as drafted and if the bill both applies only to the Town of Campbell and it is very unlikely that the bill will ever apply to a town other than Campbell, perhaps the Town of Campbell should be mentioned in the relating clause. If the bill is enacted and challenged as being a violation of Article IV, Section 18, the argument would not be that the bill is not single-subject legislation, because it is that. The argument would be that the actual subject of the bill is not accurately reflect in the title.

As indicated by the dueling state Supreme Court cases I've cited (*Phillips v. Town of Albany* and *Whitefish Bay v. Milwaukee County*), it's not clear how the court

would rule should this bill be enacted and then challenged. If there ever is a lawsuit on this issue, the determining factor will likely center on the issue of whether at the time of enactment the bill only applied to the Town of Campbell and was likely to apply only to the Town of Campbell for the foreseeable future, or whether the scope of the bill was actually broader than just the Town of Campbell. I don't know the answer to that question and I just wanted to raise the issue for Representative Huebsch so he can decide whether he wants to make any changes to the relating clause.

As to your other question, I contacted the Revisor of Statutes bureau and raised the issue of the inconsistency between the statutes and the constitution regarding the term of a county sheriff. The revisor told me that he plans to fix s. 59.20 (2), and any other related erroneous statutes, with a Revisor's bill.

Please let me know if you have any further questions

Marc

Marc E. Shovers

Senior Legislative Attorney
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e-mail: marc.shovers@legis.state.wi.us

-----Original Message-----

From: Delaporte, Robert
Sent: Wednesday, January 22, 2003 10:17 AM
To: Shovers, Marc
Subject: RE: LRB -0630/1, regarding the incorporation of certain towns surrounded by navigable water.

i'm confused
if it says that the bill has to embrace one subject...our bill seems to fit that

on a side note, one of our county board members pointed out that the statutes 59.20 (2) still state the term for a sheriff is 2 years...but the constitution now says 4 years

is that a law revision bill or do we need to pass a separate bill?

-----Original Message-----

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Marc

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State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-063072

MES:cmh:pf

RMR

2003 BILL

SOON
IN 2/4/03

the Town of Campbell
in La Crosse County

negln

1 AN ACT to amend 59.692 (7) (ad) (intro.), 66.0231 and 66.1001 (3) (a); and to
2 create 66.0216 of the statutes; relating to: the incorporation of certain towns
3 as ^avillages

Analysis by the Legislative Reference Bureau

Under current law, towns may incorporate as cities or villages by a number of methods if certain procedures are followed. Under one of the methods, the procedures include the following:

1. The circulation of an incorporation petition in the territory to be incorporated, and the filing of the petition with the circuit court.

2. A circuit court hearing on the petition at which the court determines whether a number of statutory standards are met, including resident population and population density.

3. If the court finds that the standards are met, a review of the petition by the Department of Administration (DOA) for a determination on whether a number of statutory standards are met, including the characteristics of the territory, the level of governmental services that are desired or needed by the residents compared to the level of services offered by the proposed city or village, the impact upon the remainder of the town from which the territory is to be incorporated, and the impact of the proposed incorporation on the metropolitan community.

If DOA dismisses the petition, the circuit court must issue an order dismissing the petition. If DOA grants the petition, the circuit court must order an incorporation referendum. If a majority of the votes in the referendum are cast in favor of a village or city, the secretary of state must issue and record a certificate of incorporation.

BILL

(NOR)

Currently, the bill applies only to the Town of Campbell in La Crosse County

Under another one of the methods, the incorporation as cities of certain towns that are adjacent to first class cities (presently only Milwaukee) may occur under an expedited process which does not require DOA review. With this method, the following procedures are required:

1. The circulation of an incorporation petition in the territory to be incorporated, and the filing of the petition with the town clerk. The petition must be signed by at least 100 persons who are electors and taxpayers in the town, and may be circulated only in towns that have the following characteristics: a resident population that exceeds 5,000; the town's equalized assessed value exceeds \$20,000,000; and the town is adjacent to a first class city.

2. At the next regular meeting of the town board following the filing of the petition, the board must adopt a resolution calling for a referendum by the electors on the question of the incorporation of the town as a city.

If a majority of the votes are cast in favor of a city, the clerk must certify the fact to the secretary of state, who shall then issue and record a certificate of incorporation.

This bill creates a new method for certain towns, which are located on a land area that is surrounded by navigable water, to incorporate as a village under an expedited process which does not require DOA review. Under this bill, the following procedures are required:

1. The circulation of an incorporation petition in the territory to be incorporated, and the filing of the petition with the town clerk. The petition must be signed by at least 100 persons who are electors and taxpayers in the town, and may be circulated only in towns that have the following characteristics: a resident population that exceeds 4,000; the town's equalized assessed value exceeds \$125,000,000; the town is wholly contained within a land area not exceeding 15 square miles; and the land area is surrounded by navigable waterways. This procedure may be used only with respect to an area that constitutes an entire town.

2. At the next regular meeting of the town board following the filing of the petition, the board must adopt a resolution calling for a referendum by the electors on the question of the incorporation of the town as a village.

If a majority of the votes are cast in favor of a village, the clerk must certify the fact to the secretary of state, who shall then issue and record a certificate of incorporation.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 SECTION 1. 59.692 (7) (ad) (intro.) of the statutes is amended to read:
- 2 59.692 (7) (ad) (intro.) Provisions of a county shoreland zoning ordinance that
- 3 are enacted under this section that were applicable, prior to incorporation, to any

BILL

1 shoreland area that is part of a town that incorporates as a city or village under s.
2 66.0203, 66.0211, 66.0213 ~~or~~, 66.0215, or 66.0216 after April 30, 1994, shall continue
3 in effect and shall be enforced after incorporation by the incorporated city or village
4 unless any of the following occurs:

5 **SECTION 2.** 66.0216[↓] of the statutes is created to read:

6 **66.0216 Incorporation of certain towns surrounded by navigable**
7 **waterways. (1) PETITION.** If the resident population of a town exceeds 4,000, as
8 shown by the most recent federal census or by a census under sub. (2), the town is
9 wholly contained within a land area not exceeding 15 square miles, the land area is
10 surrounded by navigable waterways, the equalized valuation of the town exceeds
11 \$125,000,000, and a petition signed by at least 100 persons, each of whom is an
12 elector and taxpayer of the town, requesting submission of the question to the
13 electors of the town, is filed with the town clerk, the procedure for becoming a village
14 under this section is initiated. The procedure under this section may be used only
15 with respect to an area that constitutes an entire town. If at the time of the filing
16 of the incorporation petition any portion of the town is subject to a prior annexation
17 proceeding by an incorporated municipality, that portion of the town shall be
18 detached from the town if the annexation is determined to be valid either as a result
19 of the failure of the town, or a resident of the town, to have filed a valid legal objection
20 or by final judgment. If the annexation is determined by final judgment to be invalid,
21 the territory that is subject to the annexation shall become part of the village formed
22 under this section.

23 **(2) REFERENDUM.** At the next regular meeting of the town board following the
24 filing of the petition under sub. (1), the town board by resolution shall provide for a
25 referendum by the electors of the town. The resolution shall conform to the

BILL

1 requirements of s. 5.15 (1) and (2) and shall determine the numbers and boundaries
2 of each ward of the proposed village and the time of voting, which may not be earlier
3 than 6 weeks after the adoption of the resolution. The resolution may direct that a
4 census be taken of the resident population of the territory on a day not more than 10
5 weeks before the date of the election, exhibiting the name of every head of a family
6 and the name of every person who is a resident in good faith of the territory on that
7 day, and the lot or quarter section of land on which that person resides, which shall
8 be verified by the affixed affidavit of the person taking the census.

9 (3) NOTICE OF REFERENDUM. The town clerk shall publish the resolution adopted
10 under sub. (2) in a newspaper published in the town. If no newspaper is published
11 in the town, the town clerk shall publish the resolution in a newspaper designated
12 in the resolution. The town clerk shall publish the resolution once a week for 4
13 successive weeks, the first publication to be not more than 4 weeks before the
14 referendum.

15 (4) VOTING PROCEDURE. The referendum shall be conducted in the same manner
16 as elections for town board supervisors. The question appearing on the ballot shall
17 be "Shall the town of become a village?" Below the question shall appear 2
18 squares. To the left of one square shall appear the words "For a village" and to the
19 left of the other square shall appear the words "Against a village." The inspectors
20 shall make a return to the town clerk.

21 (5) CERTIFICATE OF INCORPORATION. If a majority of the votes are cast in favor
22 of a village, the town clerk shall certify that fact to the secretary of state, together
23 with the result of the census under sub. (2), if any, 4 copies of a description of the legal
24 boundaries of the town, and 4 copies of a plat of the town. The secretary of state shall
25 issue a certificate of incorporation and record the certificate in a book kept for that

BILL

1 purpose. The secretary of state shall provide 2 copies of the description and plat to
2 the department of transportation and one copy to the department of revenue.

3 (6) VILLAGE POWERS. A village incorporated under this section is a body
4 corporate and politic, with the powers and privileges of a municipal corporation at
5 common law and conferred by ch. 61.

6 (7) EXISTING ORDINANCES. (a) Ordinances in force in the territory or any part
7 of the territory, to the extent not inconsistent with ch. 61, continue in force until
8 altered or repealed.

9 (b) A county shoreland^{zoning ordinance}~~ance~~ enacted under s. 59.692[✓] that is in force in any part
10 of the territory continues in force until altered under s. 59.692 (7) (ad).[✓]

11 (8) INTERIM OFFICERS, FIRST VILLAGE ELECTION. Section 66.0215 (8)[✓] and (9)[✓], as it
12 applies to a town that is incorporated as a city under s. 66.0215[✓], applies to a town that
13 is incorporated as a village under this section.

14 SECTION 3. 66.0231[✓] of the statutes is amended to read:

15 **66.0231 Notice of certain litigation affecting municipal status or**
16 **boundaries.** If a proceeding under ss. 61.187, 61.189, 61.74, 62.075, 66.0201 to
17 66.0213, 66.0215, 66.0216[✓], 66.0217, 66.0221, 66.0223, 66.0227 or 66.0307 or other
18 sections relating to an incorporation, annexation, consolidation, dissolution or
19 detachment of territory of a city or village is contested by instigation of legal
20 proceedings, the clerk of the city or village involved in the proceedings shall file with
21 the secretary of state 4 copies of a notice of the commencement of the action. The
22 clerk shall file with the secretary of state 4 copies of any judgments rendered or
23 appeals taken in such cases. The notices or copies of judgments that are required
24 under this section may also be filed by an officer or attorney of any party of interest.
25 The secretary of state shall forward to the department of transportation 2 copies and

BILL

1 to the department of revenue and the department of administration one copy each
2 of any notice of action or judgment filed with the secretary of state under this section.

3 **SECTION 4.** 66.1001 (3) (a) of the statutes is amended to read:

4 66.1001 (3) (a) Municipal incorporation procedures under s. 66.0201, 66.0203

5 or, 66.0215, ^{or}66.0216.
6

(END)